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| 10/781,121 | 02/18/2004 | Floyd Backes | 160-031 | 1979 |
| 34845 7590 07/08/2008 Anderson Gorecki & Manaras LLP 33 NAGOG PARK ACTON, MA 01720 | | | | |
| EXAMINER | | | | |
| PHAM, BRENDA H | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2616 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 07/08/2008 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/781,121

Applicant(s)

BACKES ET AL.

Examiner

BRENDA PHAM

Art Unit

2616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-5 and 11 are pending in the application.

Response to Arguments

2. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claims 1-5 and 11 are objected to because of the following informalities: Claims 1-5 and 11 recite "A program product" should be amended to "A computer program product". Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-5 and 11 are rejected under 35 U.S.C. 101 because the claimed limitation "computer-readable medium" defined in the specification, page 96 as "(c) information conveyed to a computer through communication media for example using baseband signaling or broadband signaling techniques, including carrier wave signaling techniques, such as over computer or telephone networks via a modem" which is direct to non-statutory subject matter.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Janevski et al (US 2004/0008645 A1).

Regarding claim 1, Janevski discloses a method comprising **(referring to FIG. 1, Janevski provides "a technique for facilitating handoffs between different wireless communication technologies capable of providing communication services to mobile terminals" [0022]):**

logic for associating the wireless device (Mobile Terminal 18) with a current access point (BASE STATION 26) on a first channel (CDMA 2000 COMMUNICATION PATH);

logic for ascertaining, by the wireless device (MOBILE TERMINAL 18), whether the wireless device should attempt to associate with an alternative access point (AP 32) operating on a second channel (WLAN COMMUNICATION PATH), the ascertaining logic utilizing, at least in-part, signal strengths of transmission from the alternative access point, and technology type employed by the alternative access point (**"As illustrated in FIG. 5, the mobile terminal 18 may transition from an area better served by direct CDMA access to one capable of being served via WLAN access**

via the Access Point 32. As the mobile terminal 18 comes in closer proximity to the Access Point 32, the RTSS will determine a time when it is best to initiate a transition from using the cdma2000 interface to using the WLAN interface and thereby facilitate a communication session with the host 16 via the Access Point 32 using 802.11 instead of cdma2000. Essentially, the RTSS in the mobile terminal 18 will detect the presence and the strength of the WLAN signal from the Access Point 32, and send a message directed to the proxy PCF 30 via the Access Point 32 and the Access Router 34 to indicate that the mobile terminal 18 is within the coverage area of the Access point 32 and initiate a handoff. The Access Router 34 and Access Point 32 will cooperate with the mobile terminal 18 to facilitate WLAN access authentication.” [0030])

logic for requesting association with the alternative access point if it is ascertained that the wireless device should attempt to associate with said alternative access point. (“the RTSS in the mobile terminal 18 will detect the presence and the strength of the WLAN signal from the Access Point 32, and send a message directed to the proxy PCF 30 via the Access Point 32 and the Access Router 34 to indicate that the mobile terminal 18 is within the coverage area of the Access point 32 and initiate a handoff. [0030])

Janevski does not expressly teach a computer program product comprising a computer readable medium having embodied therein a computer program. This claimed limitation is inherently included in Janevski for storing computer instruction for implement the method above.

Alternatively, it would have been obvious to those having ordinary skill in the art at the time of the invention was made to utilize a computer readable medium for storing computer instruction of method above.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Janevski et al (US 2004/0008645 A1) in view of Tiedemann et al (US 2002/0012332).

Regarding claim 2, Janevski discloses logic for automatically collecting, by the wireless device, information about access points operating on other channels **("Essentially, the RTSS in the mobile terminal 18 will detect the presence and the strength of the WLAN signal from the Access Point 32, and send a message directed to the proxy PCF30 via the Access Point 32 and the Access Router 34 to indicate that the mobile terminal 18 is within the coverage area of the Access Point 32 and initiate a handoff" [0030])**

Janevski does not disclose logic for collecting information including indication of transmit power back-off. Tiedemann, in the same field of endeavor, teaches this feature. **See paragraphs [0052]-[00540].** It would have been obvious to one of ordinary skill in the art at the time of the invention was made to adapt Tiedemann's method into the method disclosed by Janevski in order to obtain the maximum transmission rate.

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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (571) 272-3135. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild, can be reached on (571) 272-2092.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

July 1, 2008

/Brenda Pham/

Primary Examiner, Art Unit 2616